



explaining he did not get “correct information” initially and that he would “never intentionally not follow an order.” *Id.* at 2. He further stated that he was in an accident suffering serious injuries, attaching a doctor’s note as evidence. *Id.* at “Hastings Chiropractic & Wellness Center” Letter.

To support his motion, Oliver argues he called his lender “with whom [he] had started loan modification approval” process to get “current and up to date” on his mortgage payments. *Id.* at 1. He states he has “completed . . . all requirements to qualify for loan” assistance and had an appointment scheduled for May 11, 2015 with the loan representative to further discuss modification. *Id.* Oliver has attached his “Request for Mortgage Assistance” application and correspondence with the lender to this motion.<sup>2</sup>

Oliver has not articulated any legal or factual basis for his motion to dismiss, and therefore the Court denies the motion. The Court construes this *pro se* “motion to dismiss” as a Federal Rule of Civil Procedure 12(b)(6) motion to dismiss. “To survive a motion to dismiss, a complaint must contain sufficient factual matter, accepted as true, to ‘state a claim to relief that is plausible on its face.’” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007)). A claim for relief must contain (1) “a short and plain statement of the grounds for the court's jurisdiction”; (2) “a short and plain statement of the claim showing that the pleader is entitled to the relief”; and (3) “a demand for the relief sought.” FED. R. CIV. P. 8(a). In considering a motion to dismiss under Rule 12(b)(6), all factual allegations from the complaint should be taken as true, and the facts are to be construed favorably to the plaintiff. *Fernandez-Montez v. Allied Pilots Assoc.*, 987 F.2d 278, 284 (5th Cir. 1993). To survive a 12(b)(6) motion, a complaint must contain “more than labels and conclusions, and a formulaic recitation of the elements of a cause of action will not do.”

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<sup>2</sup> The Court points out that the request is with Ocwen Loan Servicing, LLC, not HSBC.

*Twombly*, 550 U.S. at 555 (2007). “Factual allegations must be enough to raise a right to relief above the speculative level.” *Id.*

HSBC has properly stated specific allegations on which relief may be granted, alleging that it holds a mortgage on the property at issue, Oliver has defaulted on payments on that mortgage, and HSBC is seeking judicial foreclosure as set out in the Texas Property Code to protect its interest. Docket no. 1 at 2-4. Oliver points to no law saying HSBC’s complaint should be dismissed. Further, Oliver appears to admit his mortgage is in default, as he states he is trying to get “current and up to date.” Docket no. 8. Oliver is also advised that completing an application for loan modification or assistance is not a basis to defend against judicial foreclosure in Texas. *See Martins v. BAC Home Loans Servicing, L.P.*, 722 F.3d 249, 256 (5th Cir. 2013); *Martin-Janson v. JP Morgan Chase Bank, N.A.*, 536 F. App’x 394, 398 (5th Cir. 2013).

For the above reasons, Defendant’s motion to dismiss is DENIED. Oliver is ORDERED to file an answer to Plaintiff’s complaint by June 1, 2015.

It is so ORDERED.

SIGNED this 19th day of May, 2015.

A handwritten signature in black ink, appearing to read 'Xavier Rodriguez', with a stylized flourish at the end.

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XAVIER RODRIGUEZ  
UNITED STATES DISTRICT JUDGE